IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CIVIL WRIT PETITION NO. 9034 OF 2004

DATE OF DECISION: March 08, 2007

Parties Name

Didar Singh

..PETITIONER

VERSUS

Financial Commissioner , Co-operation, Punjab, Chandigarh & others

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASBIR SINGH
HON'BLE MR. JUSTICE NIRMAL YADAV

PRESENT: Mr. R.C. Setia, Sr. Advocate, with Mr. G.S. Nagra, Advocate, for the petitioner.

Ms. Nirmaljit Kaur, Addl. A.G., Punjab;

Mr. Kanwaljit Singh, Advocate, for respondent No. 3.

JASBIR SINGH, J. (oral)

Order.

Petitioner and respondent No. 3 are the real brothers and they are fighting for partition of the land measuring about 86 Kanals. Matter continued before various Courts for the last more than 7 years. Vide order dated February 9, 2004, respondent No. 1 set aside the orders, passed by the authorities below, and remanded the matter to the Assistant Collector Ist Grade to decide afresh the application moved by the petitioner for partition. While remanding that matter, it was observed thus:

> "5. I have considered the arguments advanced by the learned counsel and have gone through the relevant record. It is correct that the petitioner was not sent notice at his correct address. Since the petitioner was living abroad and his address must be

in the knowledge of the respondent who is real brother of the petitioner, mushtu munadi in the village does not serve the purpose intended by law. The ruling cited by the learned counsel for the respondent, i.e., 2001(2) RCR (Civil) 739 is not applicable in this case, because the facts in both the cases are different. The ruling lays down that in case a party fails to raise any objection before preparing the instrument of partition, the party cannot raise any objection after the partition proceedings have been completed and in that event, only forum to challenge such proceedings is an appropriate civil court. But in the present case, the petitioner was not present and hence the question of raising any objection before preparation of 'Sanad Taqseem' does not arise. Secondly, as required by Section 118 (1) and 116 of the Punjab Land Revenue Act, the mode of partition has not been finally approved by the competent authority and hence the entire proceedings suffer from this legal infirmity. Under the circumstances, this Court is of the considered view that the Collector was not right in dismissing the appeal before him on the basis of limitation, particularly when it is prima facie, proved that gross injustice has been done to the petitioner. This Court is convinced that the order of partition suffers from illegalities as well as the denial of justice to the petitioner. Accordingly, the revision petition is accepted and the case is remanded to the Assistant Collector Ist Grade, Jalandhar-I to decide the case afresh after giving hearing to the parties. The Mode of Partition be also sanctioned after hearing the objections of the parties as required by the law and then the

final order be passed."

We are of the view that the impugned order is perfectly justified. It is a case, which the parties should have decided while sitting at home. Petitioner and contesting respondent No. 3 are real brothers. It is very surprising that they are fighting for partition of the land, which belongs to both of them alone. Be that as it may, we see no reason to interfere in the impugned order. Accordingly, this writ petition is disposed of by directing the Assistant Collector Ist Grade, Jalandhar, to dispose of the matter within three months from the date parties put in appearance before the said officer. Parties are directed to appear before the said officer on March 30, 2007.

(Jasbir Singh)
Judge

(Nirmal Yadav)
Judge

March 08, 2007.
DKC